

REMARKS/ARGUMENTS

Upon revival of the subject Application after unintentional abandonment, the status of the claims are as follows: claims 2-5 and 20-22 stand rejected under 35 U.S.C. § 112; claims 1-18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,165,524 to Narayanaswamy et al. in view of U.S. Patent No. 4,792,456 to Katz et al.; claims 19-34 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Narayanaswamy; claims 35-36 and 38-45 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Narayanaswamy et al in view of U.S. Patent No. 4,929,464 to Willyard et al. and U.S. Patent No. 6,149,960 to Book et al.; claim 37 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Narayanaswamy et al in view of Willyard and Katz et al.; claims 46-47 and 49-56 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Narayanaswamy et al in view of Book et al.; and claim 48 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Narayanaswamy in view of Book et al. and Katz et al.

By this response, claims 18, 24, 35 and 37 have been amended, claims 2-5, 20-22 and 46-56 have been canceled and new claims 57-62 have been added.

35 U.S.C. § 112

On page 2 of the Office Action, claims 2-5 and 20-22 have been rejected under 35 U.S.C. § 112, second paragraph. By this amendment, claims 2-5 and 20-22 have been canceled. Instead, new claims 58-62 have been added to encompass this aspect of the invention.

35 U.S.C. § 103

On page 3 of the Office Action, the Examiner rejected claims 1-18 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,165,524 to Narayanaswamy

et al. in view of U.S. Patent No. 4,792,456 to Katz et al. By this amendment, claim 18 has been amended.

Initially, it should be noted that claim 1 of the present application is directed to a dry mix composition having 50-80% flour and an encapsulated acid having a mean particle size of about 150-840 microns, wherein the acid is citric, fumaric, lactic, malic, phosphoric, sodium acid sulfate or mixtures thereof. The Examiner relies on Narayanaswamy et al., which teaches a batter composition, not a shelf stable dry mix composition as taught by claim 1. Additionally, Narayanaswamy et al. does not teach 50-80% flour as claimed, the amount of acid claimed, a mean particle size of the acid of about 150-840 microns as claimed, the particular acids claimed or an encapsulated acid having a minimum melting point of 150° F as claimed (see claim 18).

The Examiner then relies on Katz et al. which is directed to a leavening system including glucono-delta-lacton or sodium bicarbonate coated with vegetable oil, wherein the coating melts at 97-143°F to form a free flowing powder having sizes ranging between approximately 105 microns to 1000 microns (2% retained on 10 mesh and a maximum of 10% passing through 140 mesh). See column 3, lines 20-23 of Katz et al. However, Katz et al. fails to teach a dried mix as claimed, 50-80% flour, the amount of acid used, or an encapsulated acid having a minimum melting point of 150° F. With regard to the type of acid utilized, the Examiner simply states that it is well known to use citric acid as a leavening acid, without providing any references or proof and without taking Official Notice. As set forth by the Supreme Court, there must be an apparent reason for one of ordinary skill in the art to combine known elements in the fashion claimed by the patent at issue. This analysis should be made explicit. See *KSR v. Teleflex*, 550 U.S. ____ (2007), citing *In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006) (“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obvious-ness”).

Additionally, in order to show a prima facie case of obviousness under 35 U.S.C. § 103, the prior art reference must teach or suggest all of the claim limitations. See M.P.E.P. § 2143 (*citing In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)). In the present case, neither Narayanaswamy et al. nor Katz et al. teach or suggest all of the limitations of claim 1, as well as the limitations of numerous dependent claims. Therefore, no prima facie case of obviousness has been established.

On page 6 of the Office Action, the Examiner goes on to reject claims 19-34 under 35 U.S.C. § 103(a) as being unpatentable over Narayanaswamy only. By this amendment, claims 20-22 have been canceled and claim 24 amended. Again, Narayanaswamy does not teach the amount of acid claimed, a mean particle size of the acid of about 150-840 microns or the particular acids claimed or an encapsulated acid having a minimum melting point of 150° F. For at least these reasons, no prima facie case of obviousness has been established for these claims.

On page 8 of the Office Action, the Examiner rejected claims 35-36 and 38-45 under 35 U.S.C. § 103(a) as being unpatentable over Narayanaswamy et al. in view of U.S. Patent No. 4,929,464 to Willyard et al. and U.S. Patent No. 6,149,960 to Book et al. By this amendment, claims 35 and 37 have been amended. Willyard et al. is directed to frozen donut batter, and notes that it is important that the product be frozen (5° F or less) prior to frying. In contrast, claim 35 of the present invention is directed to a method of preparing a fried bakery product using a dried mix which is formed into a batter and deep fried to an internal cooked temperature of about 170-230° F. The Examiner points to a teaching for an internal donut temperature in Willyard et al of 150° F. However, this is the temperature that a previously fried donut can be heated to and does not teach the internal frying temperature of the donut at all. With respect to dependent claim 57, the encapsulated acid has a minimum melting point of 150° F and, therefore, it is important that the internal frying temperature of the batter have a higher temperature (170-230° F) in order to ensure the yeast-free and mold-free properties of the resultant product as outlined in the specification. See, for example, paragraphs 0075-0077 on page 19 of the specification.

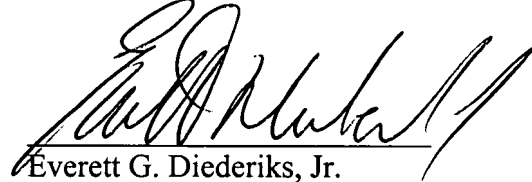
The Examiner points to Book et al., which states: "the level of carbonate factor dictates the level of each leavening acid component required." However, Book et al. is a different product than the claimed invention, and requires that "at least one heat activated leavening acid and at least one slow release (or time-release) leavening acid are required." See column 6, lines 53-56. There is no apparent reason for one of ordinary skill in the art to choose an acid amount of 0.01-1.0 % for a dry mix composition of the present invention based on Book et al. The Examiner also notes that Book et al. utilizes fumaric acid as a leavening agent. However, Book et al. only teaches utilizing fumaric acid **in combination with or instead of** encapsulated acids. See column 7, lines 9-12 of Book et al. Therefore, none of the three applied references, either alone or in combination, teach a method for preparing a fried bakery product as taught in claim 35, wherein a dry mix has about 50-80% flour; about 0.01-1% of acid is utilized; the acid is selected from the group consisting of citric, fumaric, lactic, malic, phosphoric or sodium acid sulfate; the internal cooking temperatures reaches 170-230° F; and the resultant fried products have a yeast-free and mold-free shelf life of at least 21 days. Additionally, further limitations set forth in dependent claims are not met, including the encapsulated acid having a minimum melting point of 150° F and the resultant fried products having a yeast-free and mold-free shelf life of at least 30 days or 40 days. As the prior art does not teach or suggest all of the limitations of the claims, no prima facie obviousness has been established.

On page 10 of the Office Action, claim 37 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Narayanaswamy et al. in view of Willyard and Katz et al. However, claim 37 depends from claim 35 and, for at least the reasons outlined above, is patentable over the prior art.

On page 11 of the Office Action, claims 46-47 and 49-56 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Narayanaswamy et al in view of Book et al. As set forth above, claims 46-56 have been canceled.

Based on the above, it is requested that the prior art rejections be withdrawn and the claims allowed. If the Examiner should have any additional concerns regarding the allowance of the application that can be readily addressed, she is cordially invited to contact the undersigned at the number provided below in order to further expedite prosecution.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Everett G. Diederiks, Jr.', written over a horizontal line.

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